

## ARBITRATION AWARD

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In the Matter of the Arbitration ( Grievant:  
between ( Case No:  
(Employer) )  
and )  
(Union) (

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BEFORE: Ed Escamilla, Arbitrator

### APPEARANCES:

For the Employer:

For the Union:

Place of Hearing: Albeni Falls, Idaho  
Date of Hearing: May 14 and 15, 2002  
Relevant Contract Provision: Article 12  
Contract Year: 1996-2001  
Type Grievance: Contract

### **Award Summary**

The grievance is sustained. The Employer violated Article 12 of the contract when it filled the electrical utility worker position at Albeni Falls Dam project because it did not objectively consider all applicants. The Employer is directed to repost and fill the position in accordance with Article 12's hiring procedures.

\_\_\_\_\_  
Ed Escamilla June 28, 2002  
Arbitrator

## **OPINION AND AWARD**

### Overview

On May 14 and 15, 2002, a hearing was held on the instant matter in Albeni Falls, Idaho based on a grievance filed by the Union on April 3, 2001. The Union alleges that the Employer violated the collective bargaining agreement's hiring procedures when it hired an employee for a newly created utility worker position at the Albeni Falls Dam project to the detriment of the Grievant. The hearing closed on June 10, the date briefs were due.

### **Issues**

Did the Employer violate Article 12 of the collective bargaining agreement when it filled the position of electrical utility worker at the Albeni Falls Dam project? If so what is the remedy?

### **Statement of Facts**

#### Parties' Positions

The Union argues that the selection process for the utility worker at the Albeni Falls Dam project in March 2001 violated the collective bargaining agreement for various procedural reasons and failed to award the position to the Grievant. The Union requests that the Grievant be awarded the position in question and be made whole.

The Employer argues the selection process conformed to Article 12 of the collective bargaining agreement with respect to the appropriateness of the referral list, the interview process, and all other procedural requirements. The Employer further

asserts that the selecting official was qualified to be a selecting official and that he did not harbored a bias against the Grievant.

### *Chronology*

February 12, 2001:	Position announcement.
March 26:	Position filled.
April 3:	Step 1 filed.
May 10:	Step 1 response.
May 31:	Step 2 appeal.
June 2:	Step 2 response.
July 11:	Step 3 appeal.
August 3 and November 27:	Step 3 response.

### *Relevant Contract Provisions and Documents*

#### ***Article 12 Merit Promotion and Placement:***

12.1: "The Employer shall follow the provisions of *NPRDR 690-1-335* in effect as of the effective date of this agreement..."

#### ***NPRDR 690-1-335:***

3.2: "Managers and Supervisors are responsible for: ...(i) Objectively considering all referred candidates. (j) Furnish definitive reasons for selection, based in their judgment of the qualifications of all referred candidates in relation to the knowledges, skills and abilities needed for successful performance in the position."

6.1: "General. Candidates for placement under this plan will be evaluated to determine their level of knowledge, skills, and ability for the job to be filled and on the potential to progress from the job been filled actually duties to further advancement. Procedures must meet the requirements of FPM Supplement 335-1 and AR 690-335-1.

6.4.a: "The screening of candidates to determine basic eligibility, including eligibility under the selective placement factors, is a function of the Personnel Office.

6.b.2: "For all other positions, raters will occupy positions at a level no lower than that of the position been filled and will be capable of making informed decisions regarding criteria in qualifications in the occupational field."

7.1.a: "A reasonable number of best qualified candidates will be referred. Factors which may influence the number referred are the size and nature of the applicant pool, the ability of management to review the number of candidates in a timely manner, and adverse impact reduction of the size of list may have on opportunities for the consideration of minorities and women."

7.2: "The selecting official has a right to select any candidate referred on any Referral and Selection Register or not to select any one. Selections must be based on one or more legitimate job-related reasons as to why selectee may be expected to perform the job successfully, including candidate's potential for the target level if the position has known promotional potential."

7.2.c.1: "To preclude the appearance of favoritism or pre-selection, the selecting official should interview either all best qualified candidates or none. Interview arrangements may be made by the selecting official or the Personnel Office. Telephone interviews are acceptable for candidates outside the commuting area of the position..."

#### **AR 690-335-1, Appendix B**

B-7 Need for Analysis on Jobs:

b: "The evaluation criteria developed in the job analysis may go beyond the standards for determine basic eligibility, but they must not exceed those expected of the grade of the job."

#### **Conclusions of Facts**

After careful consideration of the testimony of all the witnesses and documentary evidence, the following are the conclusions of facts drawn from the record as a whole. Credibility findings where witnesses' testimonies are in conflict are discussed in the Analysis section of this award.

Albeni Falls Dam project is a relatively small facility whose main mission is the storage of water in an effort to reduce potential flooding. The project also produces power generation, which is seasonally increased when demand is at its highest in the fall and winter of each year. Albeni Falls Dam project is also responsible for clearing debris from the waterway. Another major responsibility of Albeni Falls Dam project is maintaining recreational facilities within its jurisdiction.

Albeni Falls Dam has two distinct work groups totaling 30-32 employees with additional temporary seasonal employees. The powerhouse employees, represented by the Union, operate and maintain the powerhouse. There are approximately 5 operators, 5-7 maintenance employees and 2 warehouse employees. The maintenance employees include journeymen electrician and mechanic, who are also workers in charge (WIC), and utility workers who report to the respective WICs.

WICs are part of the bargaining unit but also exercise limited supervisory functions such as directing and assigning work to utility workers, performing appraisals, and are involved in the hiring process. These duties are specifically contained in the WIC job descriptions. The parties did not pursue the issue of whether WICs are statutory supervisors and thus I shall not make any findings on that issue.

The second group of employees is employed in the Resource Maintenance Department at the Albeni Falls Dam project and is represented by a different Union. Their primary task is to maintain the recreational facilities.

This grievance arose when an electrical utility worker position in the powerhouse became open at the Albeni Falls Dam in 2001. The position was created based on the recommendations to the project manager from the electrical WIC and the operations manager. The Grievant was employed at the McNary Dam project as a powerhouse

utility worker when the vacancy was announced; he unsuccessfully applied for the position in question.

The project manager decided to appoint Xxx as the selecting official. xxx consulted with the operation manager about the selection process. The operation manager told xxx that normally 3 top candidates would be selected and interviewed. xxx used a worksheet or “matrix” to rate each candidate by assigning points for each criterion. xxx did not retain the worksheet and thus the worksheet was unavailable for review at the hearing. xxx narrowed the referral list of 9 qualified applicants to the top 3 best qualified candidates.

xxdid not rate the Grievant as one of 3 best qualified candidates. He states that the Grievant was the 4<sup>th</sup> best qualified. He scheduled the 3 best qualified candidates for interviews by an interview panel. The panel consisted of the selecting official, mechanical WIC, operations manager, and the project manager. The panel interviewed 2 of the 3 best-qualified candidates. The third candidate withdrew his application when asked to be available for the interview. The two interviewed applicants were current employees in the Resource Maintenance Department. xxx testified that he did not considered adding the Grievant to the interview process as he thought it was unnecessary, even though he was the 4<sup>th</sup> best qualified,.

The project manager’s only instructions to the panel members were not to import a problem from the Resource Maintenance Department, referring to a personality problem as discussed below. The panel members asked prepared questions of the interviewees. The panel selected xxx for the electrical utility worker position. The project manager, who is ultimately the determinative voice in the selection process, approved xxx selection. The evidence established that the project manager has exercised this authority in the past and has rejected interviewing panels’ recommendations.

As per the required hiring procedures, xxx stated, in writing, the following reasons for the selection of Xxx for the utility worker position:

“...familiarity with the project; ability to work well with the powerhouse crew as well as work independently; and also his extensive experience.

Being that this utility man will be utilized with the mechanical, electrical and resource crews, Mr. Xxx’s well documented experience such as welding, rigging, crane operations, carpentry, concrete work, heavy equipment operations and electrical diagnostic, trouble shooting and installations help him to stand out from the best.”

The parties presented evidence regarding the Union’s arguments that the non-selection of the Grievant violated the contract because of animosity between the Grievant and the selecting official; the selection procedures were not followed; the selecting official was not part of management; and the Grievant was the best qualified of all the referred candidates.

The operations manager testified that xxx admitted that he had experienced difficulties with xxx in the past. xxx told the operations manager that these difficulties had been worked out before xxx transferred to Albeni Falls Dam project and he did not have any current problems with xxx.

The record showed that the xxx and xxx had worked together at the McNary Dam project approximately 1½ years ago. During his employment at McNary Dam project, xxx was a journeyman apprentice and later became a journeyman electrician. Xxx was a utility worker through out this period.

The record is clear that xxx and xxx had serious work problems. xxx admitted that he complained to employees on two occasions about xxx poor workmanship. xxx supervisor “chewed” him out for making those comments.

xxx stated that xxx assaulted him on one occasion. Purportedly, xxx poked xxx in his face with his finger and on the same day, xxx intentionally bumped into xxx on several occasions in an apparent attempt to provoke xxx. xxx did not complain to management about this conduct. He did however, complained about this conduct at a safety group meeting; the group took no action.

The safety officer testified that xxx complained to her that he feared xxx because xxx owned a gun and was afraid that xxx would go “Postal”. xxx told the safety officer that he felt uncomfortable coming to work because of xxx. xxx denied the statement regarding the gun. He does admit complaining to the safety group about xxx potentially violent attitude towards him. xxx was not recalled to testify about the safety officer’s testimony.

Several Albeni Falls Dam employees testified about xxx statements concerning xxx made during the selection process. One employee testified that xxx stated that he would never hire xxx at Albeni Falls Dam because xxx was a troublemaker. Another employee testified that xxx told him that xxx was crazy and unstable and if xxx was hired, xxx would leave. Although xxx averred that he had poor recollection about these statements, he nevertheless denied making these statements. He admitted that he told Albeni Falls Dam employees that he was not surprised that xxx had filed a grievance over his non-selection.

The parties presented evidence concerning the skills and qualifications of xxx and xxx. The Union attempted to show that xxx was the best qualified, while the Employer submitted evidence to justify that xxx was the top candidate. Because of the conclusions drawn in the Analysis below, further findings of fact on this issue are unnecessary.

The parties also presented evidence concerning the procedures utilized to select the position in question. The Union’s arguments centered on the lack of interview of all



the candidates; the Employer's reliance on skills not part of the utility worker position; the pre-selection of an Albeni Falls Dam employee for the utility worker position; providing xxx with an unfair advantage by assigning him temporary work at the powerhouse under the "job shadowing program"; and the inappropriateness of a non-supervisor as the selecting official.

With respect to the pre-selection argument, the evidence showed that a contemporaneous personnel problem existed at the Resource Maintenance Department among a supervisor and several employees, including xxx. The Union argued that xxx qualification should reflect his inability to harmoniously work with other employees and that one of the reasons for xxx selection was due to this problem. The Employer's witnesses testified that they believed that the problem did not lie with the employees, but rather with the supervisor.

The Union witnesses testified that the project manager while discussing the upcoming downsizing of the Resource Maintenance Department, told them that he wanted to transfer a Resource Maintenance Department employee to the powerhouse in order to prevent a possible layoff, but only if the employee was qualified. The project manager never named any employee in this discussion or at any other time.

With respect to the job shadowing practice, the record established that this program was an accepted means of providing employees with exposure to different jobs in both the Resource Maintenance Department and the powerhouse. This program had been utilized in the past. However, the record is also clear that the project manager utilized the job shadowing program as a means to diffuse the tension between xxx and his supervisor.

Further discussions of the facts relating to the pertinent contractual hiring procedures and the implementation of those procedures is unnecessary as all of the relevant evidence is undisputed; the conclusions and reasons thereof regarding the

various procedural arguments advanced by the Union are discussed in the Analysis portion of this award.

## **Analysis**

After carefully reviewing all the evidence, and the parties' briefs, arguments, and cited FLRA cases<sup>1</sup>, the following findings of facts and conclusions are made. Preliminarily, in contract dispute cases, as is in this case, the burden of proof rests on the Union to establish by the preponderance of the evidence that the contract was violated or that the Employer's actions were arbitrary and capricious. For the reasons discussed below, I conclude that the Union met its burden of proof and established that the Employer violated Article 12 of the collective bargaining agreement.

### **Credibility resolutions**

With respect to the various statements attributed to xxx by employees at Albeni Falls Dam, I credit the Union's witnesses that the asserted statements were made based on the Union's witnesses' unwavering recollections versus xxx repeated guarded answers. The credibility resolution is made solely on the basis that xxx repeatedly prefaced his answers that he could not recall making those statements as the incident occurred several years ago. xxx eventual denial of the statements does not negate his repeated assertions that he had a poor recollection.

Furthermore, the Employer argues that the Union's witnesses were biased against Xxx because he was not a member of the Union. I find no evidentiary bases to

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<sup>1</sup> US Department of the Army, 48 FLRA No. 92 (1993) wherein the arbitrator found that the selectee was not qualified and ordered that the employee be removed from the position—inapposite findings herein re selectee's qualifications; US Department of Labor, 55 FLRA No.166 (1999)

support his argument. There was no direct evidence to show any overt hostility towards Xxx because of his non-union status. No causal connection was established between the Union witnesses' testimony and Xxx's lack of Union membership to show bias against Xxx sufficient to affect the witnesses' credibility.

With respect to the testimony of the safety officer at McNary Dam project, I credit her testimony that Xxx complained to her about his fear of Xxx's potential violent behavior. I find that the safety officer is a disinterested witness in this matter and therefore a presumption arises that disinterested witnesses' testimony are more reliable over witnesses testimony who have a stake in the outcome of a proceeding. The Employer did not rebut this presumption and therefore I credit the safety officer's testimony. Irrespective of this credibility ruling, the relevant import of both Xxx's and the safety officer's testimony is that Xxx complained to the safety officer about Xxx's violent and aggressive conduct towards Xxx. Thus, the real issue relative to this testimony is whether Xxx's perception of Xxx persisted during the critical time involved herein.

I also conclude that the project manager did not tell anyone that a specific employee from the Resource Maintenance Department would be selected. All witnesses agreed, that whatever statement the project manager made relative to this issue, he added the caveat that in order to be selected, employees had to be qualified.

### Conclusions

#### 1. Qualifications

The Union argues that the Grievant's qualifications based on his experience as a utility worker in the powerhouse at McNary Dam for over 20 years clearly provided him with all the require skills and knowledge to perform the work at Albeni Falls Dam. The Grievant additional skills of "changing permits" demonstrated that Grievant was assigned

tasks with more responsibilities. Even though his resume did not include his experience concerning operating heavy equipment, the Grievant testified that he had ample experience in this area. He did not include this work skill in his resume because the job description did not specify the need for this skill. The Union argues that Xxx was less qualified because he did not have any experience as a utility worker in a powerhouse and because of his work relations difficulties at Albeni Falls Dam.

The Employer's evidence established that the supervisor was mostly responsible for Xxx's work problems. The panel discussed this specific issue in their assessment of Xxx's qualifications. The interview panel concluded that Xxx's difficulties with his supervisor were not a sufficient factor to affect Xxx's overall skills and qualifications, as he would now be supervised by a different person.

With respect to skills needed as a powerhouse utility worker, the Employer viewed Xxx's past experience, which dealt with a variety of work and skills, to be influential in selecting him. The Employer anticipated that the new utility worker would be more than just an electrical utility worker; the employee was expected to perform other tasks normally performed by mechanical utility workers and the Resource Maintenance employees. Based on Xxx's familiarity with the project's specific functions, and his overall abilities, skills that included mechanical utility worker skills and Resource Maintenance employee skills, and the anticipated broader use of the utility worker, the panel selected Xxx as the best candidate. I find that Xxx was indeed qualified for the position.

The hiring selection process is an integral part of management's exclusive right to hire employees. Absent a showing by a preponderance of the evidence that the selectee was not qualified, it is difficult if not impossible for an arbitrator to place himself as the selecting official, and objectively decide who the best candidate is. I do not believe that this is the role of the arbitrator in this case. Unless there is specific evidence that a form of discrimination occurred or that the selectee was clearly not qualified, the

selection decision shall remain with management and shall not be usurped by this arbitrator.

More importantly, the relevant issue at hand is not whether the Grievant should have been selected for the position, but rather whether the Grievant was precluded from being considered by the interview panel as one of the best qualified. The alleged conduct's harm was the Employer's failure to consider rather than to select the Grievant for the utility worker position. Thus, Grievant's qualification as the best candidate is not at issue nor shall I decide that the Grievant's qualification merit his selection.

## 2. Improper selecting official

The Union argues that the selection process was flawed because the selecting official was not a supervisor or manager. The record established that WIC employees have been selecting officials in the past. There is no evidence that the Union previously complained about this process and conversely, that the Union has waived its right to advance this argument. The record is sufficient to reach conclusions on this issue even without determining whether WIC employees are statutory supervisors and thus part of management. Instead, I shall focus on other factors that contradict the Union's argument.

Firstly, the WIC job description, which the parties are bound to, clearly states that WIC employees shall be involved in the hiring process. The job description does not restrict WIC from being appointed as the selecting official. It merely states that WICs are responsible for hiring employees. Because of the general language contained in the WIC job description, the Employer acted within its contractual authority and right by appointing the WIC as the selecting official.

The Union also relies on *NPRDR 690-1-335*, Section 3.2 to support its argument that WIC is an inappropriate selecting official. Indeed there is an obligation for managers and supervisors to be responsible for the hiring of employees. However, I do not interpret that clause to mean that supervisors and managers may not delegate some of the authority to subordinates, even non-supervisors, especially when management retains overall responsibility. In this case, the project manager, without contradiction, testified that he is the final reviewer of the hiring process and he can either accept or reject the selectee. Thus, management has in effect retained and exercised its authority and responsibility over the hiring process.

Additionally, the record is also clear that although the WIC was appointed as the selecting official, he did not act in a vacuum in processing and analyzing the candidates. He consulted the operations manager who advised him how to proceed. More importantly, the interview panel consisted of the operations manager and the project manager who are admitted supervisors. Therefore, management was involved in the hiring of the utility worker throughout the selection process.

Furthermore, Section 6.b.2 of *NPRDR 690-1-335* states that “raters will occupy positions at a level no lower than that of the position being filled and will be capable of making informed decisions regarding criteria in qualifications in the occupational field.” I interpret this phrase to mean that individuals involved in the hiring process may occupy a position equal to that of the opened position irrespective of supervisory status. In this case, a WIC is clearly a “rater” who occupies a position that is higher than the position being filled. This section, as well as the pertinent job description as discussed above, supports the conclusion that the Employer did not violate the collective bargaining agreement by appointing a WIC as the selecting official.

### 3. Inappropriate selecting procedures

The Union argued that several admitted procedures did not conform to the hiring policies and procedures. Specifically, the Union argued that the basis for selecting Xxx exceed the prescribed parameters as per AR 690-335-1, Appendix B, Section, B-7.b, by emphasizing Xxx's skills which were not part of the utility worker's job description. I have carefully examined these policies and procedures relative to this argument, and find no merit to the Union's argument.

I conclude that this section does not limit or prohibit the Employer from considering an employee's entire work experience or skills beyond that of the minimal requirements of the position in question. Specifically, this provision sets forth a mandate that employees who meet the skills and requirements in the job description shall be considered as candidates. At most, this provision requires that the Employer create a referral list of all interested and qualified candidates, which has been complied with in this case. Inasmuch as this section does preclude other considerations the Employer may review, the Union's argument is rejected.

The second procedural argument concerns the interviews or lack thereof, of the candidates. The Union argues that all of the applicants should have been interviewed pursuant to Section 7.2.c.1 of *NPRDR 690-1-335*. I do not interpret this section in a manner as suggested by the Union.

The Union's argument however, necessarily involves two issues, the number of applicants determined to be the best qualified and the number of applicants interviewed. The number of best qualified candidates is defined as "reasonable"; no set number is prescribed. Section 7.1.a states that "Factors which may influence the number referred [best qualified] are the size and nature of the applicant pool, the ability of management to review the number of candidates in a timely manner...". In this case, 1/3 of the candidates were referred to the interviewing panel as the best qualified candidates. There is no contractual basis to suggest that the number of best qualified candidates

referred to the interview panel is insufficient or in any other manner arbitrary or capricious. Thus, I conclude that the Employer's reduction of the referral list to the three top candidates did not violate any contractual provision as the contractual language provides the Employer with this discretion.

With respect to the number of candidates interviewed, the hiring process pursuant to Section 7.2.c.1. permits the referral list to be reduced to the best qualified candidates. If any interviews are held, all of the best qualified candidates, if any are interviewed. This section specifically refers to interviewing the best qualified candidates as opposed to all candidates on the referral list. This provision is clear that the Employer may limit the interview process to only the best qualified applicants.

Under these circumstances, I do not find that the Employer failed to adhere to Section 7. Specifically the Employer did not violate Section 7 by reducing the referral list to only three candidates and by limiting the number of interviewees to the three best qualified candidates. The Union's argument that all of the candidates on the referral list should have been interviewed is rejected.

Finally with respect to the Union's argument that the process was flawed because the interviewers did not have prepared written question, I conclude that the evidence proved otherwise. Xxx testified that he and the other interview panel members had prepared questions. His testimony was un rebutted and thus effectively negates this argument.

#### 4. Pre-selection

The Union relies on Section 7.2.c.1 of *NPRDR 690-1-335* to argue that the selection process was breached because the project manager had preselected a Resource Maintenance Department employee. The evidence does not support this



conclusion. The project manager readily admitted that he hoped to transfer one of the Resource Maintenance Department employees to avoid possible reduction of force issues because of that department's projected downsizing.

It is also equally clear that the project manager never stated that the selection of a Resource Maintenance Department employee was a foregone conclusion nor did he ever name an employee in his discussions with the Union. In fact, the evidence shows that the project manager emphasized that any interested Resource Maintenance Department employee had to be qualified in order to be transferred to the powerhouse.

The Union's pre-selection argument is also contradicted by the unrefuted testimony of several witnesses that the project manager was concerned about transferring employees from the Resource Maintenance Department. He advised the interview panel members to make sure they did not import a problem into the powerhouse. This concern referenced the ongoing problem between employees and the supervisor. Such a concern further supports the conclusion that the project manager had not preselected any employee for the utility worker position.

#### 5. Job shadowing advantage

The Union argues that the job shadowing program provided Xxx with an unfair advantage. Indeed, it may have had such an effect. The program is a legitimate way of providing employees an opportunity to discover other employment opportunities and in that respect it does provide those employees with an advantage. However, this advantage is neither repugnant to the hiring process nor patently unfair to other employees merely because an employee avails himself of a contractual opportunity that gives him an advantage over other applicants. Accordingly, I reject this argument.

6. Selecting official bias against Grievant.

The Union argues that Section 3.2 of *NPRDR 690-1-335* requires management to “objectively consider all referred candidates” and that it failed to comply with this requirement because the selecting official was biased against the Grievant. I find merit to this argument for the reasons discussed below.

The Employer’s own witness, the operations manager, readily admitted that it would be inappropriate to appoint a selecting official who was biased or had animosity towards one of the candidates. The reasoning is obvious; the selecting official would not be objective. Based on the testimony of all the witnesses, including Xxx, and all of the reasonable inferences drawn from the testimony, I conclude that the preponderance of the evidence established that the selecting official did not objectively consider all of the applicants, specifically the Grievant.

It is clear that the selecting official and the Grievant did not enjoy a good working relationship when they worked together at McNary Dam. Rather, the working relationship was acrimonious and even hostile. Irrespective of whether Xxx or the safety officer testimony is credited, the conclusion is inescapable that Xxx had been concerned about Grievant’s aggressive nature towards him.

Every day experiences and common sense leads to the conclusion that unpleasant personal experiences inertly affect our impressions and judgments. Xxx’s concern about the Grievant’s aggressive nature undoubtedly had a lasting recessed impression about the Grievant. I find that Xxx’s experience with the Grievant and hostile work relationship with the Grievant is undoubtedly an indelible fixture of Xxx’s opinion of the Grievant, irrespective of Xxx’s assertion to the contrary. Because of the past violent work history and Xxx’s concern thereof, I conclude that the selecting official did not objectively consider all the applicants, specifically the Grievant, when Xxx narrowed the referral list to the 3 best qualified candidates.

There are additional reasons for concluding that the selecting official did not objectively consider the Grievant. Although, the selecting official denies that he retained any animosity towards the Grievant after he left McNary Dam project, the credible evidence shows otherwise. The credited evidence shows that the selecting official's contemporaneous statements about the Grievant revealed a continued concern and predisposed impression of the Grievant, thereby affecting the selecting official's objectivity.

More importantly, the selecting official's own testimony is perhaps the most revealing. He stated that he was not surprised that the Grievant filed the grievance. This statement provides ample basis to conclude that the selecting official had contemporaneous and preconceived impressions of the Grievant during the selection process. Those impressions obviously evolved from his prior work experience with the Grievant. The selecting official's statement is a tacit admission that he indeed lacked objectivity in assessing the Grievant's qualifications because of his lingering impressions of the Grievant.

Accordingly, for the reasons stated above, I conclude that the hiring process was breached and that the Employer violated Article 12 of the collective bargaining agreement and Section 3.2 of *NPRDR 690-1-335* because the selecting official did not objectively consider all of the applicants, specifically the Grievant.

### Remedy

The Union requested that the Grievant be awarded the utility worker position at Albeni Falls Dam project as part of their remedy. I find the record does not support such a remedy. The Grievant was only denied an opportunity to be fairly and objectively considered for the utility worker position. It is unknown how the Grievant would have

faired if he were considered to be one of the best qualified and interviewed by the panel. Accordingly, the remedy is limited to the following provisions.

The Employer is directed to repost the electrical utility worker position at Albeni Falls Dam project. If the Grievant is on the referral list, the Employer shall appoint a selecting official other than Xxx. Although input from employees who will work closely with the prospective employee is an important element in the hiring process, the more appropriate manner to proceed in this case is to exclude Xxx from the entire hiring process if the Grievant is rated as one of the best qualified and is scheduled for an interview. The current selected employee shall retain the position pending the corrective action as described herein. (See US Department of the Army, p7 *supra*)

### **Award**

The grievance is sustained. The Employer violated Article 12 of the collective bargaining agreement and Section 3.2 of *NPRDR 690-1-335* when it failed to objectively consider the Grievant's qualifications. The Employer is directed to repost the position of utility worker at Albeni Falls Dam project and upon receipt of the referral list to objectively consider all candidates.